

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK



CONNIE POULIN, Individually and as
Personal Representative of the estate of
David Poulin, deceased,

Plaintiff,

22-CV-553

v.

BOSTON SCIENTIFIC
CORPORATION,

Defendant.

DECISION AND ORDER

Plaintiff Connie Poulin commenced this action on June 14, 2022, in the Supreme Court of the State of New York, Chautauqua County, asserting various products liability claims relating to her husband's death. *See* Dkt. 1, at 7-30. Defendant removed the action to this Court on July 15, 2022. Dkt. 1. The Complaint sets forth nine causes of action: (1) failure to warn; (2) design defect; (3) implied warranty; (4) express warranty; (5) consumer fraud and unfair and deceptive trade practices; (6) wrongful death; (7) loss of consortium; (8) survival damages; and (9) punitive damages. *Id.* at 13-29.

On July 22, 2022, Defendant moved to dismiss the Complaint. Dkt. 4. Plaintiff opposed the motion, and Defendant replied. Dkt. 12, 13. This Court referred the case to United States Magistrate Judge Leslie G. Foschio for all proceedings under 28 U.S.C. §§ 636(b)(1)(A), (B), and (C). Dkt. 8.

On December 9, 2022, Judge Foschio issued a Report and Recommendation (“R&R”), recommending that Defendant’s motion be denied in part, dismissed as moot in part, and granted in part. Dkt. 22. Specifically, Judge Foschio recommended that Defendant’s motion should be denied as to the First, Sixth, Seventh and Eighth claims, dismissed as moot as to the Third and Ninth claims, and granted as to the Second, Fourth, and Fifth claims “without prejudice and with leave to replead.” *Id.* at 27-28. Neither party objected to the R&R, and the time to do so has expired.

A district court may accept, reject, or modify the findings or recommendations of a magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). A district court must conduct a *de novo* review of those portions of a magistrate judge’s recommendation to which a party objects. *See* 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ. P. 72(b)(3). But neither 28 U.S.C. § 636 nor Federal Rule of Civil Procedure 72 requires a district court to review the recommendation of a magistrate judge to which no objections are raised. *See Thomas v. Arn*, 474 U.S. 140, 149–50 (1985).

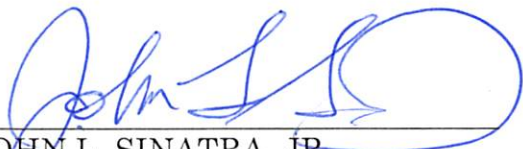
Although not required to do so, this Court carefully reviewed the R&R and the parties’ submissions. Based on that review, the Court accepts and adopts Judge Foschio’s recommendation.

For the reasons stated above and in the R&R, Defendant’s motion (Dkt. 4) is DENIED as to the First, Sixth, Seventh and Eighth claims, DISMISSED as moot as to the Third and Ninth claims, and GRANTED as to the Second, Fourth, and Fifth claims with leave to amend. As a result, Plaintiff’s First, Sixth, Seventh and

Eighth claims survive. Her remaining claims are dismissed. Plaintiff is granted leave to amend the Complaint as to the Second, Fourth, and Fifth claims. Plaintiff's amended complaint is due within 21 days. This case is referred back to Judge Foschio for further proceedings consistent with the referral order of August 10, 2022. *See* Dkt. 8.

SO ORDERED.

Dated: January 9, 2023
Buffalo, New York



JOHN L. SINATRA, JR.
UNITED STATES DISTRICT JUDGE